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10/591,037	06/15/2007	Antonio Guerra	13877/20201	5826
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KENYON & KENYON LLP			WEDDLE, ALEXANDER MARION	
ONE BROADWAY				
NEW YORK, NY 10004			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/591,037	GUERRA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	ALEXANDER WEDDLE	1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 April 2009.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-15 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1.) Certified copies of the priority documents have been received.  
 2.) Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3.) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Response to Arguments***

1. Applicant's amendments, see Amendments to the Claims, filed April 27, 2009, with respect to the claims have been fully considered and are persuasive. The objection of January 27, 2009 has been withdrawn.
2. Applicant's arguments filed April 27, 2009 as to the rejections under 35 USC 102/103 and 35 USC 103 have been fully considered but they are not persuasive.

In response to Applicant's arguments regarding Claims 1, 7, and 12 (Remarks, p. 7, 2nd paragraph and p. 8, first full paragraph) that Aoyama (US'670) expressly teaches away from an emulsion paint composition and a method that produces spherical fine particles composed of particles of large diameters and small diameters (having a broad particle size distribution) by stating that this method is "usually undesirable" (see citation in Remarks, p. 7, 2<sup>nd</sup> paragraph, line 9), the cited phrase is apparently "usually desirable" (US'670, col. 11, line 36), referring to another method of producing spherical fine particles with a narrow particle size distribution (col. 11, lines 33-36). Thus, US'670 does not teach away from the first method above.

Furthermore, because Applicant's argument against routine optimization relies on the Applicant's argument that US'670 teaches the undesirability of the particle size distribution, and Examiner has found that argument unpersuasive, Examiner also finds the argument against routine optimization unpersuasive.

In response to Applicant's argument regarding Claims 1 and 12 that US'670 teaches away from a certain percentage of particles (see Remarks, p. 7, 2<sup>nd</sup> paragraph,

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lines 9-11), US'670 teaches that the particles "should have an average particle diameter of 1-100 [microns], preferably 3-70 [microns], and more preferably 5-50 [microns]" (col. 13, lines 10-15), and the recited diameters of both the 3-10% of particles and the 25-40% of the particles fall within or overlap with the preferable and/ or more preferable ranges.

As to the assertion of unexpected results (Remarks, p. 7, 2<sup>nd</sup> paragraph, lines 11-13), a showing of unexpected results must be based on evidence, not argument or speculation. The specification presents no factual evidence to show that results were actually unexpected in comparison to the results in the prior art.

As to the argument that there is no motivation to combine Bolton and Aoyama (Remarks, p. 7, third paragraph), Bolton and Aoyama are analogous art because they are within the field of Applicant's endeavor, which is a method of painting to simulate a texture, and more specifically painting with an emulsion paint to simulate a texture.

In response to Applicants argument regarding Claim 6, the argument is unpersuasive because the Examiner rejected product-by-process claims over a product, which although prepared in a different manner, reasonably appeared to be the same (*prima facie*) or only slightly different than a product claimed in a product-by-process claim. As a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith.

3. Any rejections based on new ground(s) of rejection are necessitated by amendment.

***Claim Objections***

4. Claims 1-5 are objected to because of the following informalities: The usage among the claims of the terms "first opaque layer" and "second semi-opaque layer" is inconsistent and confusing. Claims 1, 4, and 5 apparently refer to the opaque layer as "the first opaque layer" and to the semi-opaque layer as "the second semi-opaque layer." Claims 2 and 3 simply recite "the opaque layer" and "the semi-opaque layer." In fact, there appears to be only an opaque layer and a semi-opaque layer; the term "second semi-opaque layer" is confusing because it implies a first semi-opaque layer. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 2 and 12-13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 2 as amended recites "the opaque layer is a first color and the semi-opaque layer is a second color, and the first color and the second color are the same." Both the claims and the specification as originally filed claim and disclose that the opaque and the semi-opaque layers are "of a corresponding [color]" (Abstract; Claim 2), or "in accordance with" (par. 0015). The application as filed

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does not expressly disclose that the colors ("first" and "second") are identical or the same. "Corresponding color" may be understood by the person of ordinary skill in the art to mean "complementary" colors on a color wheel, not identical. Moreover, although Example 1 discloses that the opaque layer/ primer may comprise titanium dioxide and the semi-opaque layer is pre-pigmented with titanium dioxide, it is not clear that the resulting colors of the layers are the same, and, because the opaque layer may comprise other pigments, it is not clear that "corresponding" is intended in the original disclosure to include "the same."

***Product-by-Process - 35 USC § 102/§ 103***

***35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claim 6 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bolton et al. (US 7,335,399).

Bolton et al. (US'399) teach a substrate painted with a multi-layer effect with an opaque base-layer and a semi-opaque top-layer (col. 5, lines 1-21; col. 7, lines 6-11; col. 9, lines 7-11).

In *In re Thorpe*, 227 USPQ 964 (CAFC 1985), the Examiner rejected product-by-process claims over a product, which although prepared in a different manner, appeared to be the same (*prima facie*) as the claimed product. **Since in spite of the fact that the claim may recite only process limitations, it is the patentability of the product claimed and not of the recited process steps which must be established.** It is well settled that when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claimed in a product-by-process claim, a rejection based alternatively on either section 102 or section 103 of the statute is eminently fair and acceptable. As a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then

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obtain prior art products and make physical comparisons therewith." In re Brown, 459 F.2d 531, 535, 173 USPQ 685, 688 (CCPA 1972).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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14. Claims 1 and 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bolton et al. (US 7,335,399) in view of Aoyama (US 5,498,670).

Regarding Claims 1 and 3, Bolton et al. (US'399) teach a method of painting a substrate with an emulsion paint comprising the steps of applying an opaque layer ("base coat") to a substrate and applying a pigmented emulsion paint over the opaque layer (Abstract). The opaque layer is made of an aqueous pigmented primer comprising an acrylic binder ("crosslinkable acrylic polymer") (col. 5, lines 1-8). US'399 teaches applying the pigmented emulsion paint in a semi-opaque layer, painting lightly and/or sparingly onto the substrate in an amount sufficient to replicate a wood color, to provide darkening color to texture recesses in the substrate, and not to obscure the color of the underlying coat (col. 8, lines 42-49; col. 8, line 64 - col. 9, line 11; col. 7, lines 6-11). The colors of the opaque and the semi-opaque layers are selected so that they are of a corresponding color, i.e., should be compatibly selected or "relate to each other," so as to provide a brilliance of color and for faithful reproduction of the desired wood coloration (col. 9, lines 22-29).

US'399 is silent as to the particle shape or size distribution. US'670 teaches that a method of forming an emulsion paint of spherical particles with an average particle diameter of 1-100 microns may be produced with a broad or with a narrow particle size distribution (col. 11, lines 10-40). US'670 teaches that the coating composition may be used as a paint to be applied to a variety of substrates for decorative finish with a good texture (col. 12, lines 48-55). It would have been obvious to a person of ordinary skill in

the art at the time of invention to modify the process of US'399 by using the method of US'670 to produce a distribution of particles in order to achieve a desired texture.

US'399 in view of US'670 fails to teach a particle size distribution in which 3 – 10% of the particles have an average particle size between 63 – 90 microns and 25 – 40 % have a particle size between 40 - 63 microns. Particle size distribution is a result-effective variable, because particle size distribution will affect the appearance and texture of the paint. It would have been obvious to a person of ordinary skill in the art at the time of invention to modify US'399 in view of US'670 by determining the optimal particle-size distribution as a result of routine optimization.

Regarding claim 4, US'399 teaches applying the emulsion paint “top coat” by brush in a cross-way fashion – at a 45 degree cross-angle to the grain (col. 10, line 66 – col. 11, line 2).

15. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bolton et al. (US 7,335,399) in view of Aoyama (US 5,498,670) as applied to Claim 1 above, and further in view of Makimura et al. (JP2000256970).

US'399 in view of US'670 is silent as to a first and second color which are the same. Makimura et al. (JP'970) teach a method of producing suede-like artificial leather formed by a pattern of lightness and darkness of the same color (Abstract). It would have been obvious to a person of ordinary skill in the art at the time of invention to modify the process of US'399 in view of US'670 by using a first and second color of the same color, because JP'970 suggests that such a color scheme will produce a graceful suede-like appearance (Abstract).

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16. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bolton et al. (US 7,335,399) in view of Aoyama (US 5,498,670) as applied to claim 1 above, and further in view of Booth et al. (US 2004/0158949).

Regarding Claim 5, US'399 provides examples of applicators for the top coat including a brush, sponge, cloth, or the like (col. 8, line 64 – col. 9, line 1). US'399 in view of US'670 fails to teach applying a top coat by roller. Examiner takes Official Notice that it was well-known in the art at the time of invention to apply a top coat emulsion paint to a substrate with a roller. It would have been obvious to a person of ordinary skill in the art at the time of invention to modify the process of US'399 by using a roller with a reasonable expectation of success, because a roller can hold more paint than a brush and can paint an area more quickly and, often, more uniformly.

US'399 in view of US'670 further fails to teach dragging over the freshly applied top coat a tool comprising a flat side provided with fibrous material, preferably of stiff parallel projecting fibers such as synthetic grass fibers. Booth et al. (US'949) teach a tool ("blade") comprising a flat side provided with a synthetic fibrous material ("bristles") for dragging ("applying") paint (Fig. 2; par. 0007, 0039). It would have been obvious to a person of ordinary skill in the art at the time of invention to modify the process of US'399 in view of US'670 to use the fibrous flat side of the tool taught by US'949, because US'949 teaches that such tool is useful to apply coating material to obstructed surfaces (par. 0013).

The combined references further fail to teach dragging the fibrous tool over the top coat subsequent to applying with a roller. It would have been obvious to a person of

ordinary skill in the art at the time of invention to modify the method of the combined references by dragging the fibrous tool over the top coat subsequent to applying with a roller in order to spread the paint to obstructed areas or create a decorative, textured finish as taught by the combined references.

17. Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aoyama (US 5,498,670).

Regarding Claim 7, US'670 teaches an emulsion paint composition comprising spherical particles with an average particle diameter of 1-100 microns, and the particles may be produced with a broad or with a narrow particle size distribution (col. 11, lines 10-40).

US'670 fail to teach a particle size distribution in which 3 – 10% of the particles have an average particle size between 63 – 90 microns and 25 – 40 % have a particle size between 40 - 63 microns. Particle size distribution is a result-effective variable, because particle size distribution will affect the appearance and texture of the paint. It would have been obvious to a person of ordinary skill in the art at the time of invention to modify US'670 by determining the optimal particle-size distribution as a result of routine optimization.

Regarding Claim 8, US'670 teaches that at least a portion of the spherical particles are polyurethane particles (col. 3, lines 33-48).

Regarding Claim 9, US'670 is silent as to the specific density of the particles. Specific density is a result-effective variable which affects the thickness and viscosity of the paint and thus the appearance of the painted top coat. It would have been obvious

to a person of ordinary skill in the art at the time of invention to modify the process of US'670 by determining the optimal specific density of the particles as a result of routine optimization.

Regarding Claim 10, US'670 teaches that the spherical particles may be pre-pigmented (col. 9, lines 25-29).

18. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aoyama (US 5,498,670) as applied to claim 7 above, and further in view of McGeary ("Paintings by Dennis McGeary").

US'670 teaches that the spherical particles may contain a variety of additives, which do not defeat the intended use of the paint composition (col. 9, lines 31-34). US'670 fails to teach that the paint comprises wood fibers. McGeary ("Paintings") teaches adding wood shavings, paper, and banana stem fibers, among other additives, to paint to achieve textured paintings. It would have been obvious to a person of ordinary skill in the art at the time of invention to modify the paint composition of US'670 by adding wood fibers as taught by McGeary in order to achieve a decorative paint for texturing a substrate.

US'670 in view of McGeary is silent on the length of the wood fibers. The length of the wood fibers is a result-effective variable, because the length affects the texture of, the appearance of, and the ease of applying the paint composition. It would have been obvious to a person of ordinary skill in the art at the time of invention to modify the composition of US'670 in view of McGeary by determining the optimal length of the wood fibers as a result of routine optimization.

19. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bolton et al. (US 7,335,399) in view of Aoyama (US 5,498,670), and further in view of Makimura et al. (JP2000256970).

Regarding Claim 12, Bolton et al. (US'399) teach a set ("kit") which comprises an opaque aqueous acrylic coating and a semi-opaque emulsion paint (Abstract; col. 5, lines 1-8; col. 7, lines 6-11). US'399 is silent as to a set of paint products comprising the semi-opaque emulsion paint according to claim 7 and an opaque aqueous acrylic coating composition of a corresponding color.

US'399 fails to teach the composition of Claim 7. US'670 teaches an emulsion paint composition comprising spherical particles with an average particle diameter of 1-100 microns, and the particles may be produced with a broad or with a narrow particle size distribution (col. 11, lines 10-40).

US'670 fails to teach a particle size distribution in which 3 – 10% of the particles have an average particle size between 63 – 90 microns and 25 – 40 % have a particle size between 40 - 63 microns. Particle size distribution is a result-effective variable, because particle size distribution will affect the appearance and texture of the paint. It would have been obvious to a person of ordinary skill in the art at the time of invention to modify US'670 by determining the optimal particle-size distribution as a result of routine optimization.

It would have been obvious to a person of ordinary skill in the art at the time of invention to modify the set of US'399 by substituting the semi-opaque composition of US'670 for the semi-opaque composition of US'399, because US'670 teaches that the

paint composition provides a textured paint layer with an excellent appearance (col. 2, lines 26-29).

US'399 in view of US'670 is silent as to a first and second color which are the same. Makimura et al. (JP'970) teach a method of producing suede-like artificial leather formed by a pattern of lightness and darkness of the same color (Abstract). It would have been obvious to a person of ordinary skill in the art at the time of invention to modify the set of US'399 in view of US'670 by using a first and second color of the same color, because JP'970 suggests that such a color scheme will produce a graceful suede-like appearance (Abstract).

20. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bolton et al. (US 7,335,399) in view of Aoyama (US 5,498,670) and Makimura et al. (JP2000256970) as applied to claim 12 above, and further in view of Booth et al. (US 2004/0158949).

US'399 further teaches that the set ("kit") includes tools ("applicators") for applying the paint, including a scraper and/or a brush (Abstract). US'399 in view of US'670 fails to teach a tool with a flat side provided with fibrous material. Booth et al. (US'949) teach a tool ("blade") comprising a flat side provided with a synthetic fibrous material ("bristles") for dragging ("applying") paint (Fig. 2; par. 0007, 0039). It would have been obvious to a person of ordinary skill in the art at the time of invention to modify the set of US'399 in view of US'670 to include the tool of US'949, because US'949 teaches that such tool is useful to apply coating material to obstructed surfaces [0013].

21. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bolton et al. (US 7,335,399) in view of Aoyama (US 5,498,670), and further in view of Booth et al. (US 2004/0158949) as applied to Claim 5 above, and further in view of Weihrauch et al. (US 2004/0091704) and Edwards et al. (US 6,478,925).

Regarding Claim 14, the combination of references is silent as to stiff fibers for use as paintbrushes. Weihrauch et al. (US'704) teach that monofilaments of polyethylene terephthalate, also used as synthetic grass, are used as paintbrush bristles (Abstract; pars. 0002, 0015; Claim 6). It would have been obvious to a person of ordinary skill in the art at the time of invention to modify the process of the combination of references by using a stiff fiber, such as a synthetic grass fiber, to make a paintbrush, because US'704 suggests that such material produces paintbrushes of excellent rigidity and water and chemical resistance (Abstract; pars. 0015, 0030).

US'399 in view of US'670 is silent as to a tool with a fibrous material. US'949 teaches bristles that extend outwardly from the face of the blade, but does not disclose parallel fibers. The combination of references is silent as to orientation. Edwards et al. (US'925) teach a method of forming parallel projecting stiff brush fibers made from stiff polyethylene terephthalate monofilaments, also used for synthetic grass fibers (Abstract; col. 1, lines 9-15; col. 6, lines 35-41; col. 7, lines 1-6). It would have been obvious to a person of ordinary skill in the art at the time of invention to modify the process of the combination of references by making brushes of stiff parallel projecting fibers, because US'925 suggests that the process of US'925 provides a brush, such as

that taught specifically by US'704, which can be made as stiff or as flexible as needed with monofilaments of a variety of cross-sectional shapes (col. 5, line 66- col. 6, line 57).

22. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bolton et al. (US 7,335,399) in view of Aoyama (US 5,498,670), and further in view of Booth et al. (US 2004/0158949) as applied to Claim 5 above, and further in view of Weihrauch et al. (US 2004/0091704).

Regarding Claim 15, the combination of references is silent as to forming stiff fibers for use as paintbrushes. Weihrauch et al. (US'704) teach that monofilaments of polyethylene terephthalate, also used as synthetic grass, are used as paintbrush bristles (Abstract; pars. 0002, 0015; Claim 6). It would have been obvious to a person of ordinary skill in the art at the time of invention to modify the process of the combination of references by using a stiff fiber, such as that used for synthetic grass fibers, to make a paintbrush, because US'704 suggests that such material produces paintbrushes of excellent rigidity and water and chemical resistance (Abstract; pars. 0015, 0030).

### ***Conclusion***

23. No Claim is allowed.

24. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALEXANDER WEDDLE whose telephone number is (571) 270-5346. The examiner can normally be reached on Monday-Thursday, 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Kornakov can be reached on (571)272-1303. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. W./  
Examiner, Art Unit 1792  
/Michael Kornakov/  
Supervisory Patent Examiner, Art Unit 1792